

MANAGEMENT OF HARASSMENT INCLUDING SEXUAL HARASSMENT POLICY AND PROCEDURES

PART 1: POLICY ON HARASSMENT

1. 1 Policy on preventing harassment

Yalga-binbi Institute aims to create training and work environments which are safe, healthy, harmonious, free from harassment, and responsive to the community that it serves. Any behaviour by any member of the Institute community directed at another member of this community and which contradicts this principle may be regarded as harassment, and dealt with under this policy.

This policy is an adjunct to the policy and procedural statement *Procedures for Handling Grievances and Complaints*, and should be read in conjunction with it. The procedures set out in that document apply to the handling of complaints or grievances covered by this document, and are to be used in handling complaints made by staff, students, or any other members of the Institute community to which this policy is applicable. However, there are some stringent requirements for confidentiality in handling complaints of harassment, and some specific requirements for recording information, which are detailed towards the end of this document.

Harassment is unlawful under Queensland and Commonwealth antidiscrimination legislation. Some forms of behaviour, including indecent exposure, stalking, assault, and rape, are criminal offences and will be dealt with as such rather than under this policy.

PART 2: UNDERSTANDING HARASSMENT

2.1 What is harassment?

Harassment is behaviour directed at, or which affects, another person, which is both unwelcome and unacceptable.

Harassment is unlawful if a person being harassed is able to show, on the balance of probabilities:

- that the other person intended to offend, humiliate, or intimidate him or her; or
- that the person being harassed would be offended, humiliated or intimidated in circumstances where a reasonable person would have anticipated such an outcome.

The relevant circumstances take into account sex, age, race, religion or personal beliefs, cultural values, disabilities and impairments, and the relationship between the two people.

Harassment can be:

- Physical contact, such as touching, pinching, jostling, or physical intimidation;
- Verbal comments, such as offensive or abusive comments, teasing, whistling, lewd jokes, ridiculing appearance or actions, obscene or threatening phone calls, or the use of offensive names;
- Non-verbal actions, such as messages sent in the mail, displays of insulting material or graffiti, obscene hand and body gestures, obstructing access to work or other areas, stalking and other obsessive behaviour, interference with a person's workspace, work materials, equipment or property.

Unwelcome behaviour may be viewed as harassment when it is repeated, especially after the person responsible has been told it is offensive or unacceptable and has been asked to stop. Harassment may be a single act or a series of acts or repeated behaviours. Some remarks or

actions are so offensive that a single incident is harassment, for example, in cases involving inappropriate touching.

Harassment may be unconscious and unintended. The distress caused by harassment can be the same whether the behaviour was intended or not.

Different social or cultural backgrounds may lead people to see the same conduct differently. What one person might accept as reasonable behaviour, another person may find offensive.

2.2 Sexual, Racial and General Harassment and Vilification

- Sexual harassment covers a range of unwelcome, unsolicited, and unreciprocated behaviour which constitutes deliberate or unintentional verbal or physical conduct of a sexual nature. Sexual harassment may be male to female, female to male, male to male, or female to female. Examples of sexual harassment are:
 - Physical actions, such as deliberately brushing or pushing up against someone, kissing or hugging someone against their will;
 - Verbal comments, such as persistently inviting someone out after having been refused, requests for sexual favours, and questions or comments about someone's appearance or private life;
 - Non-verbal actions, such as gestures, leers, stares, indecent exposure, displays of explicit or offensive material such as photographs;
 - Other communication of a sexual nature by means of a note, letter, telephone, computer, email, or any other means.

It is not sexual harassment to develop friendships, sexual or otherwise, with staff members. Actions that would be unlawful sexual harassment in one context may not be so in others. Other single incidents, such as an unwanted invitation out or a compliment, may not constitute harassment if they are not repeated.

- Sexist or sex-based harassment occurs when a person is harassed because of his or her gender. It consists of any abusive treatment of one sex that is not directed towards members of the other sex in a similar circumstance; for example:
 - abuse of married women for working;
 - jokes about women or men which characterise them by offensive stereotypes;
 - posters, written material or objects which denigrate or demean members of one sex and make the workplace a hostile environment for them;
 - aggressive or intimidatory behaviour intended to make men or women feel unwelcome in the work environment.
- Racial harassment is offensive behaviour directed at a person because of their colour, ethnic origin, nationality, or ancestry. Racial harassment may be related to obvious characteristics or to prejudices and attitudes relating to race, such as a view that one race is superior to another race. Examples of racial harassment are:
 - racist jokes;
 - shunning other people because of their race;
 - persistent use of derogatory terms;
 - belittling cultural practices;
 - threatening graffiti, racist posters or written material.
- General harassment is repeated offensive behaviour or unwelcome attention towards an individual or a group of workers or clients on the basis of some real or perceived attribute of the individual or group, for example age, sexual preferences, and disability. It may be in the form of:
 - abuse from colleagues and clients;
 - moving material from or around a person's work space or interfering with their personal property or working equipment, tools or books;

- practical jokes;
- phone calls, letters, or messages on electronic mail or computer networks which are threatening, abusive, or offensive;
- intentional exclusion from work, study or socially related activities when that behaviour is designed to offend the excluded person.

There is no onus on the person being harassed to say that he or she finds the conduct objectionable. Many people find it difficult to speak up. All staff and students are responsible for their own behaviour.

- Vilification is the public act of a person which incites hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the grounds of:
 - Race;
 - Homosexuality;
 - Transgender;
 - Disability; or
 - HIV/AIDS status.

Examples of actions that may constitute vilification are:

- graffiti;
- speeches or statements made in public;
- abuse that happens in public;
- statements or remarks in the media or through internet or e-mail etc;
- wearing symbols, such as badges or clothing with slogans, in public;
- gestures made in public;
- posters or stickers in public space.

2.3 What is not harassment?

Harassment should not be confused with normal behaviour such as:

- normal conduct in the work environment that has the consent of those involved;
- legitimate comment and advice from a supervisor including relevant negative comment or constructive criticism of work;
- approved disciplinary action in relation to work matters;
- appropriate action to manage poor performance in the workplace;
- mutual attraction between two people;
- an occasional compliment;
- friendly banter.

Many one-off situations that may be annoying or embarrassing are not harassment if they are not repeated (e.g., an unwanted invitation).

PART 3: RESPONSIBILITIES OF INDIVIDUAL MEMBERS OF STAFF

3.1 Responsibilities of Senior Officers

Senior Officers have an important role to play in preventing harassment because of their capacity to influence others and to demonstrate proper standards of conduct within the workplace environment.

Senior Officers are expected to accept responsibility for:

- providing a role model by treating all people within the Institute environment with courtesy and respect at all times;
- setting and monitoring standards for acceptable workplace behaviour, ensuring staff are aware of these standards and taking appropriate action when standards are infringed;
- ensuring that they are personally familiar with the Institute's policies and procedures on Managing Harassment, and ensuring that other staff are also informed;

- dealing with all allegations of harassment seriously, confidentially, and promptly;
- observing the principles of natural justice, as demonstrated by procedural fairness, and ensuring that complainants are not victimised at any time;
- actively promoting the benefits of an harassment-free study and work environment, and by taking early action to deal with behaviour which may be offensive or intimidating;
- supporting and working co-operatively with Contact Officers defined under the statement of *Procedures for Handling Grievances and Complaints*.

3.2 Responsibilities of Individual Members of Staff

All members of staff can contribute to ensuring that Yalga-binbi Institute is a fair and harassment free place to work.

All members of staff are expected to:

- share responsibility for maintaining acceptable standards of behaviour in the workplace by adopting high standards of personal behaviour and accepting the rights of others to work in an harmonious environment;
- carry out the responsibility of being a Contact Officer under the statement of *Procedures for Handling Grievances and Complaints* if they should be the person approached by a student, colleague, or another member of the Institute community concerned about harassment. Alternatively, if they are unable to carry out this responsibility for any reason, they will refer the complainant to another Contact Officer, Supervisor, an appropriate Senior Officer, or to the Training Co-ordinator.
- treat other staff, students, and other members of the Institute community with sensitivity, courtesy and respect;
- speak out if they see instances of inappropriate behaviour. Silence can be interpreted as condoning the behaviour.
- refuse to participate in behaviour which may harass or be offensive to others.

3.3 The Role of Contact Officers

All members of staff are expected to serve as Contact Officers if they are the first person to be contacted by a member of the Institute community who feels that they are the subject of harassment of some kind.

The role of the Contact Officer is set out in the statement of *Procedures for Handling Grievances and Complaints*; however, some additional points need to be emphasized:

- People who are the subject of harassment, especially sexual harassment, may feel embarrassed or fearful to make their concerns known. Therefore, it is essential that the Contact Officer treat the matter as strictly confidential and make the situation known to another person, such as a Senior Officer, only with the agreement of the complainant.
- Contact Officers are required to respect an individual's right to make their own decisions in their own time about what action to take, and to treat enquiries and complaints about harassment confidentially.
- The only circumstance in which a Contact Officer should breach confidentiality is where there could be a risk to the safety of others or to the person making the complaint (e.g., if it is claimed that the alleged harasser has made threats of physical violence to the complainant). In such circumstances, the complainant should be advised of the Contact Officer's intentions to speak with some one else, and the reasons for that course of action.
- Interaction between the Contact Officer and the complainant is essentially verbal. However, the Contact Officer should keep brief notes as a memory aid and to assist in providing information to the appropriate Senior Officer if the complaint proceeds to Stage 2 or beyond in the procedures for resolution of complaints and grievances.
- Investigations and attempted resolution of complaints to do with harassment, especially sexual harassment, must be carried out in the strictest confidentiality and with the utmost discretion. It must be remembered that an allegation is an allegation, not proof. The Contact Officer's notes should be recorded in a way that will prevent another person from

identifying the complainant or respondent or incorrectly identifying an innocent third party until and unless the complaint is proven and disciplinary action is taken. At this time the Contact Officer's notes may be given to the Training Co-ordinator or Director for filing or destruction, as they determine.

- The Contact Officer's reports to the Training Co-ordinator or Director must not include details of specific incidents or the identities of individuals except with the written personal consent of the complainant.
- Under no circumstances are the notes made to be given to any other person without the written consent of the complainant.

PART 4: WHAT THE COMPLAINANT CAN DO

4.1 Option 1 - Taking no action

One option open to someone who is offended by another's behaviour is to take no action. This tends to avoid the problem and is unlikely to be a successful way of dealing with harassment.

The Yalga-binbi Institute can NOT decide to take no action. If the responsible officers within the Institute become aware of harassment, or of allegations of harassment, they have a duty of care to ensure that the matter is investigated and that any necessary action is taken.

4.2 Option 2 - Personal approach to the respondent

The complainant may choose to approach the respondent and raise the subject of the offending behaviour. It is important for the complainant to focus on the behaviour and NOT the person when taking this approach. (For example, by using words such as *When you do this I feel ... NOT you really annoy me when you*)

Asking the person to stop the offensive behaviour can be done in a number of ways; for example, talking to them face to face, calling them on the telephone, or writing a confidential letter.

4.3 Option 3 - Lodge a Stage One or Stage Two Grievance

Another option is for the complainant to seek the assistance of another member of staff or a Senior Officer, or request their immediate supervisor to deal directly with the complaint under Stage 1 or 2 of the *Procedures for Handling Grievances and Complaints*.

4.4 Option 4 - Lodge a Written Complaint (Stage Three Grievance)

If the Contact Officer is unable to resolve the complaint to the satisfaction of the complainant (e.g., where there is an allegation of sexual harassment), the complainant may lodge a written complaint as set out in the *Procedures for Handling Grievances and Complaints*.

4.5 Option 5 - Formal external action

A complainant may choose to take their complaint to an external organisation. A complainant has the right to take this action at any stage in the process or after the Institute's internal processes have been completed if they are unhappy with the outcome.

PART 5: RIGHTS AND RESPONSIBILITIES OF COMPLAINANTS AND RESPONDENTS

5.1 Rights of complainants and respondents

Both complainants and respondents have rights in resolving harassment complaints. In the interests of achieving a satisfactory resolution, and to ensure natural justice for all parties to the complaint, the following principles must apply:

- Complainants are entitled to:
 - receive appropriate attention to their complaint, including personal support;
 - be given information about internal and external options for resolution;
 - be offered a process for conciliation, investigation, and resolution which is prompt, confidential, and fair.
- Respondents are entitled to:
 - know the complaint against them;
 - have access to information and assistance to prepare their response to the complaint and any subsequent disciplinary process;
 - be given a prompt, confidential and fair hearing and the opportunity to respond to adverse material in any internal process about the complaint.

5.2 Responsibilities of complainants and respondents

Once a complaint has been lodged, complainants and respondents are required to undertake to conduct themselves appropriately, specifically as follows:

- Complainants are required to:
 - maintain appropriate confidentiality about their complaint;
 - co-operate with the Institute's efforts to achieve a just resolution to the complaint.
- Respondents are required to:
 - avoid repetition of any behaviour that may be interpreted as offensive;
 - maintain appropriate confidentiality about the complaint;
 - co-operate with the Institute's efforts to achieve a just resolution of the complaint.

PART 6: RECORD KEEPING

Records must be kept of all alleged and substantiated complaints, including informal ones.

6.1 Secure records

All records associated with an harassment complaint should be kept in a secure place, in locked storage, where access is restricted to authorised personnel only. The confidential Complaints and Grievances file should be kept secure and confidential at all times.

6.2 Recording of complaints

Senior Officers must keep records in all situations where they have been involved in an harassment case. Record keeping requirements for Contact Officers have been dealt with previously.

- **Stage One and Stage Two complaints**

Where a Stage One or Stage Two complaint has been made, the Contact Officer or Senior Officer should note brief details of the interview (the name being withheld) including the date and action

taken to resolve the issue. Usually an entry in a personal diary will be sufficient. Brief records of action, follow up and monitoring of the situation should also be kept.

Where a Stage One or Stage Two complaint requires substantial investigation by a Senior Officer, more complete notes, including the substance of all interviews, should be kept of all interactions with the complainant, respondent and witnesses. Reference to names should be omitted.

- **Stage Three complaints**

Guidelines for record keeping for Stage Three complaints are as set out in the *Procedures for Handling Grievances and Complaints*.

- **Recording when a complaint is substantiated**

If a complaint has been substantiated and the offender has been disciplined, their personal file should contain a summary of the nature of the complaint, the outcome, and the action taken against them. The full record of the information obtained in the investigation of the complaint should be kept in the confidential Complaints and Grievances file, so that access is limited to a 'need to know' basis.

- **When a complaint has not been substantiated**

In cases where, after formal investigation, it cannot be established whether the complaint has substance or not, the records need to be kept on a separate confidential file so that the situation can be monitored. If there are further allegations, the earlier complaint can be relevant in identifying a pattern of behaviour.

If a complaint has been found to be unfounded, groundless, malicious, or made only to cause harm to the respondent, then a report, without the name of the respondent, should be kept on the complainant's personal file, but all other documentation destroyed. Only a note should be kept on the respondent's file to the effect that he or she had been the subject of an unsubstantiated, groundless, or malicious complaint and fully exonerated. No other details should be recorded, including the name of the complainant.